

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

TA No.368/2010

[WP (Civil) No. 4899/2007 of Delhi High Court]

No. 3004178-W Ex Recruit Shri PalPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Sh. V.D. Sharma, Advocate.

For respondents: Ms. Barkha Babbar, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

ORDER

1. Writ Petition No. 4899 of 2007 was received on transfer from Hon'ble Delhi High court on 13.11.2009.

2. Petitioner by this petition has prayed for quashing of the order of discharge from the service on medical ground and he may be reinstated in Army service with all consequential benefits.

It is further prayed that he may be granted service and disability pension alternatively and pensionary benefits as applicable from his discharge on medical grounds is attributable and aggravated due to Military training and service.

3. The petitioner was enrolled in the Army on 28.02.2002. While undergoing recruit training, he was discovered with a disability '*BOW LEGS*' and was placed before a Medical Board which opined that he is not likely to become an efficient soldier. The petitioner was discharged on 04.07.2002 on medical grounds with a disability of 11% to 14%.

4. Learned counsel of the petitioner argued that since the petitioner was medically examined on 28.02.2002 before the enrolment and found fit, the disability so detected on 28.04.2002 was consequent to the hard military training of recruits for infantry man. Also, he drew our attention to the counter memo filed by the respondents and the Invaliding Medical Board proceedings therein. The petitioner was not aware of the degree of his disablement. Now that he is aware that the disability is between

11% to 14%, he now seeks only the service element of the pension.

5. Learned counsel for the petitioner argued that as per section 173 of the Pension Regulations for the Army, 1962, there are two elements to a Disability Pension i.e. service element and disability element. Since the petitioner does not qualify for the disability element, since his disability is below 20%, he should be given the service element. He drew our attention to section 183 (1) (b) (ii) of the Pension Regulation for the Army 1962 where the minimum amount of service pension is laid down when an individual has not rendered sufficient service to qualify for a service pension.

6. Learned counsel for the petitioner further argued that vide the Entitlement Rules for Casualty Pensionary Awards, 1982, Appendix II Para 5 (a) and (b), clearly lays down that having been recruited as medically fit, discharge from service on medical grounds makes the disease attributable or aggravated by service. Beside, the onus of proof lies with the respondents as per para 9 of the same Appendix. As per the petitioner his disease is covered

under Appendix III para D, 4 and 5. The condition came about due to training, marching, prolonged standing etc.

7. Learned counsel for the respondents submitted that vide Regulation 135 (d) of Regulations for the Army, 1962, a recruit may be examined by a Medical Board before commencement of the training. In this case, his disease (deformity) was detected within 60 days of his enrolment i.e. on 20th April, 2002. He was subsequently referred to the Command Hospital, Lucknow where the Specialist declared him '*UNFIT*'. Consequent to this opinion he was discharged under Army Rule 13 (c) (iv).

8. Surgeon Captain Bhandari (Doctor) who was present in the court deposed to say that 'BOW LEGS' as a condition cannot occur within 60 days of training. It is a deformity of bones and could cause complications had the petitioner continued with the training.

9. Learned counsel for the respondents drew our attention to Section 198 of the Pension Regulations for the Army

1962 under which the petitioner may be granted Invalid Gratuity. Since the petitioner is not entitled to Disability Pension and he is also not entitled to the service element of the pension.

10. We are of the opinion that the petitioner will be governed by section 198 of the Pension Regulations for the Army, 1962 which states

“Invalid Pension/Gratuity when Admissible

197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter. To

- (a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service;*
- (b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated service, but the disability is assessed at less than 20% : and*
- (c) a low medical category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical category*

Minimum Qualifying Service

198. The minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible.”

11. In view of the foregoing, we dismiss the petition. However, the petitioner may be granted Invalid Gratuity as applicable, if not already done so, as per para 201 of the Pension Regulations for Army, 1962 within 90 days of this order. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
March 18, 2010.